

REMARKS

Reconsideration of the application in light of the amendments and the following remarks is respectfully requested. With the Examiner's permission, entry of this amendment is respectfully requested.

In the current Office Action, now a Final Rejection, a new reference to Hersch et al. (US 7,491,424) was cited for the first time. As Applicant's hereto fore have not yet been able to comment on the newly cited reference, Applicants respectfully request consideration and entry of this amendment under 37 C.F.R. 1.116, at least for purposes of filing an Appeal.

In the Final Rejection, Claim 1 was first objected to as comprising a minor informality which has been addressed and corrected in this response. In light of the amendment to Claim 1, the Examiner is respectfully requested to remove the objection.

Claims 1-3, 5-7 and 19 are pending. In the Final Rejection, each claim stands rejected under 35 U.S.C. 103(a) as being unpatentable over Mennie et al. (U.S. Patent Number 6,721,442 B1) in view of Hersch et al. (U.S. Patent Number 7,491,424) and Voellmer et al. (U.S. Patent Number 6,439,395). While the Examiner appears to apply Mennie in view of Hersch and Voellmer in the rejection, page 5 of the office action refers to Lee et al. (U.S. Patent Number 6,786,954 B1) as providing a general teaching at col. 17 lines 62-64 of an out-of-gamut color produced by a custom color ink. Applicants respectfully query whether it is intended that Lee is to be cited by the Examiner as part of the present 35 U.S.C. 103(a) rejection, at least for purposes of filing an Appeal.

With respect to the rejection of Claim 1, applicants respectfully disagree. Particularly, applicants disagree with the Examiner's characterization of Hersch et al. that the combination of a metallic ink (taught by Hersch) and a standard ink produces a color in a second color gamut outside that of the typical "standard" color gamut. That is, the Examiner relies on Hersch for the teaching that the out of gamut color is a metallic ink ("custom" ink) such that any mark provided with this custom ink will lie within the second color gamut which is outside the gamut of the printer device.

Applicants respectfully disagree.

For security or authenticity purposes, Hersch teaches use of metallic ink combined with a "standard" color ink on a document. Hersch's standard color ink (cyan, magental, blue, yellow, etc) is also a "transparent" ink (See Hersch at col. 6, lines 47-61). However, contrary to the Examiner's indication, Hersch's use of combined transparent (standard) color ink and metallic ink does not render that standard color "out of gamut" of a commercially available printer. To this end, the Examiner is referred to Hersch at Col. 7, lines 50-60 which teaches that under non-specular light reflection, a printed CMY patch is not distinguishable from its corresponding printed CMY patch adapted for superposition on a metallic ink (silver ink, "s", rendering the ink patch "scmy"). That is, using a standard (low cost) printer device having a limited color gamut and implementing non-specular reflection as in the present invention, will not reveal the presence of a metallic ink nor any pattern printed therewith.

Thus, applicants reading of Hersch is that only high cost printers implementing specular reflection will be able to discern embedded patterns such as produced by the metallic ink. That is, only at specular reflection angles will the metallic patterns be highly visible. Hersch at Fig. 1,

and col. 6, lines 28-39. Thus, respectfully, the detection of patterns as produced by metallic ink in combination with the standard ink (a so-called custom colored ink) has nothing to do with the color gamut of the printer device, but rather the specular characteristic of the light used in the scanning process (Fig.1 of Hersch). Mennie does not distinguish between use of specular light (angled) and non-specular scanning technique. Thus, Mennie would not implement Hersch to determine counterfitted documents as Hersch's teaching of the combined metallic and standard ink would be reproducible by a low-cost (standard or commercially available) printer and any copy of a document printed with such ink would not be distinguishable (i.e., not out of gamut) using application of non-specular light. Under scanning conditions of use of specular light, only hidden "patterns" based on the metallic ink application will be viewed. Again detection of "patterns" for authenticity (as taught in Hersch) has nothing to do with a color gamut of a printer device.

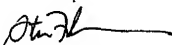
Thus, the combination of Mennie and Hersch will not produce low cost method of detecting casual counterfitting (as the intent of the present invention). Hersch is not combinable with Mennie in that metallic ink is not a custom color ink that, in combination with a standard color ink, will render that standard color out of gamut of the printer gamut. In fact, as explicitly stated in Hersch, the CMY pattern would be indistinguishable with CMYS (S being silver metallic ink) See Hersch at Col. 7, lines 50-60.

Thus, respectfully, the combination of Hersch and Mennie, whether taken alone or in combination with Voellmer does not meet the limitations of Claim 1, and the Examiner has not made out a prima facie case of obviousness.

Accordingly, applicants respectfully request that the Examiner withdraw the rejection of claim 1 (and all claims dependent thereon) under 35 USC § 103(a).

Therefore, in view of the foregoing, this application is now believed to be in condition for allowance, and a Notice of Allowance is respectfully requested. If the Examiner believes a telephone conference might expedite prosecution of this case, applicant respectfully requests that the Examiner call applicant's attorney at (516) 742-4343.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Steven Fischman', with a long horizontal flourish extending to the right.

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